BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

KATHY L. MURPHY	)	
Claimant	)	
	)	
VS.	)	
	)	
STATE OF KANSAS	)	
Respondent	)	Docket No. 1,054,829
	)	
AND	)	
	)	
STATE SELF INSURANCE FUND	)	

ORDER

STATEMENT OF THE CASE

Respondent and the State Self Insurance Fund (respondent) requested review of the February 6, 2013, Award entered by Administrative Law Judge (ALJ) Steven J. Howard. The Board heard oral argument on May 14, 2013. James E. Martin, of Overland Park, Kansas, appeared for claimant. Karl L. Wenger, of Kansas City, Kansas, appeared for respondent.

The ALJ found claimant suffered an accidental injury that arose out of and in the course of her employment. Accordingly, the ALJ awarded claimant a 24 percent impairment to her left upper extremity pursuant to the stipulation of the parties.

The Board has considered the record and adopted the stipulations listed in the Award. Claimant noted that respondent referred to a deposition taken of claimant in its brief to the Board. Since the transcript of that deposition was not made a part of the record, claimant asks that any reference to the deposition be stricken from respondent's brief. The deposition indicated was not listed as being part of the record in the ALJ's Award, and the Board has not considered the deposition or any reference to the deposition in this appeal.

ISSUES

Respondent argues claimant's injury did not arise out of and in the course of her employment. Respondent contends claimant's injury did not occur on respondent's premises and did not meet the exceptions to the "going and coming" rule. Further,

respondent asserts claimant's injury was the result of an activity of day-to-day living. Respondent asks that the ALJ's Award be reversed.

Claimant asks that the ALJ's Award be affirmed. She contends she met an exception to the "going and coming" rule as she was on the only route available to and from her work, which was a route that involved a special risk or hazard and was not one used by the public except in dealings with her employer, when she tripped and fell.

The issue for the Board's review is: Did claimant's injury arise out of and in the course of her employment?

FINDINGS OF FACT

Claimant works for respondent as an Accounting Clerk II at the Wyandotte County Courthouse. Although claimant works for the District Court of Wyandotte County, she is paid by the State of Kansas. Claimant's job is to wait on people who come to the counter to pay fines, marriage license fees, or pay judgments, as well as to issue receipts for these transactions. These fees are associated with the District Court of Wyandotte County. Claimant was injured on January 20, 2011, when she tripped on a floor mat and fell, injuring her right knee, left shoulder and left forearm.

Claimant testified that she arrives for work anywhere from 15 to 20 minutes before 8 a.m. and parks in the parking garage connected to the Wyandotte County Courthouse. Claimant testified that Wyandotte County owns and operates the garage and dictates where everyone parks by assigning each employee a parking spot. Claimant pays the County for the parking spot. She stated if a district court employee parked somewhere other than the garage or used public transportation, that employee might enter the courthouse through another entrance.

To get to the district court area from the parking garage, claimant must take an elevator from the parking lot to the basement of the courthouse, and then go through a breezeway to a door. She must use her key card to enter through the door and gain access into the courthouse. Only employees working in the courthouse can go in this way. Then claimant must make her way down a hallway and through the justice complex. She testified no one other than employees of the district court are allowed to use the hallway. She then would go past some double glass doors into a public area where security is located, then through another set of doors in the lobby to another elevator that takes her upstairs to where her work area is located on the third floor. She also testified that this is the only route available to get to her work area from the parking garage.

Claimant alleges that on January 20, 2011, as she was making the trek to her work area, she tripped and fell to the floor after her foot got caught on the edge of a floor mat near but before she passed through the double glass doors leading into the public area where the security desk is located. The area where she fell was an area used by other

employees of the county courthouse, such as sheriff's deputies, jail employees, and other county employees. Claimant had not clocked in to work before she fell, and she had no work with her. She did not take any work home the evening before.

Claimant testified her assistant supervisor and a fellow clerk from her office had been walking with her at the time of the accident. After the fall, claimant required medical care and was taken by ambulance to Providence Medical Center. Claimant was off work for 2 1/2 weeks following the accident.

William Burns, Jr., is the Court Administrator of the Wyandotte County District Court. He is employed by the State of Kansas and works on the third floor of the Wyandotte County Courthouse. He said there are approximately 132 district court employees at the courthouse. They are all state employees. Claimant works in the accounting division and collects filing fees. Mr. Burns said the filing fees are not all state fees; any filing fee could be divided into different areas and some fees could go to the county as well as the state.

Mr. Burns stated the district court employees are working in the Wyandotte County Courthouse under the Court Unification Act (Act), which Mr. Burns thinks was passed in 1976. That Act took the authority over the courts from local to state government. Under the Act, a county now must provide a place for the district court to operate. Wyandotte County provides the courthouse for the district court to operate, and claimant is an employee of the district court.

The Wyandotte County district attorney's office, the county jail and other county offices are in the courthouse. The County maintains, controls and polices the entire building, as well as the parking garage. The rug on which claimant fell was provided and maintained by the County. Neither the State nor the district court had any control over where the rugs were placed. Neither the State nor Mr. Burns' office dictated where claimant parked. Claimant is allowed to park in the garage, but she has to pay a fee from her own pocket to the County. Mr. Burns said there are state employees who work in the courthouse who do not pay for a spot in the parking garage. Those employees would use an entrance to the building other than the one used by claimant.

Mr. Burns identified a photograph that had been made an exhibit at the preliminary hearing that showed the area where claimant fell. Mr. Burns said the district attorney's office is to the left side of the photograph, and pretrial services are to the right. The area takes one into the main courthouse building after going through security. This is an area where district court employees would enter if they were coming from the parking garage. Mr. Burns said the general public could be in this area if they had gone through security and were going to do business with the sheriff's office or the district attorney's office.

The area where claimant fell is not an area in which she works, nor is it related in any way to the area where the State conducts business. The area in which claimant fell is not exclusively used by state employees. After 7 a.m., it is not necessary to have a pass

key to get to the area where claimant fell. The general public can go into that area, but they must go through security. They would come through the door and walk on the same mat on which claimant tripped.

PRINCIPLES OF LAW AND ANALYSIS

This claim has been before the Board previously in an appeal from a preliminary hearing order. At that time, the Board denied this claim and reversed the ALJ's determination that claimant suffered a compensable injury arising out of and in the course of her employment. Thereafter, the ALJ conducted a regular hearing and, again, found the claim to be compensable. None of the evidence presented at the regular hearing or in the deposition of Mr. Burns persuades the Board that claimant suffered a compensable injury arising out of and in the course of her employment.

At the time of her accident, claimant was not working; she had not assumed the duties of her employment. Rather, she was on her way to assume the duties of her employment. The proximate cause of her injury was not due to the respondent's negligence. As such, the "going and coming" rule applies and will preclude compensation unless claimant was on respondent's premises or on the only available route to or from work which involved a special risk or hazard and which is a route not used by the public except in dealings with the respondent.

Claimant was not on the premises of the respondent when her accident occurred. Claimant worked for the State of Kansas. The courthouse is owned, operated and controlled by Wyandotte County. The hallway where claimant fell was not part of the office of the Clerk of the District Court, and it was not used exclusively by employees of the office of the Clerk of the District Court and/or persons having business with the office of the Clerk of the District Court. It is also used by certain Wyandotte County employees. It is conceivable that the hallway was essentially or primarily used only by employees of respondent and, therefore, ostensibly part of and the effective equivalent of respondent's premises, as in *Rinke*,[1] but that evidence is not in the record. In addition, the fact that the County directed claimant where to park does not evidence control by respondent over either the parking lot or the hallway area of the justice complex where claimant fell or further claimant's contention that those areas should be treated as the respondent's premises. As such, claimant has failed to prove her accident falls within an exception to the going and coming rule.

Where the Workers Compensation Act applies, if an employee is injured by an accident that arises out of and in the course of employment, the employer is liable to compensate the employee under K.S.A. 2010 Supp. 44-501. The term "arising out of" employment is further defined:

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[1] *Rinke v. Bank of America*, 282 Kan. 746, 148 P.3d 553 (2006).

> The phrase [arising] 'out of' employment points to the cause or origin of the worker's accident and requires some causal connection between the accidental injury and the employment. An injury arises 'out of' employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is required to be performed and the resulting injury.[2]

Generally, if an employee is injured while on his or her way to assume the duties of employment or after leaving such employment, the injuries are not considered to have arisen out of and in the course of employment under K.S.A. 2010 Supp. 44–508(f). This rule is known as the "going and coming" rule.[3] The rationale for the "going and coming" rule was explained in *Thompson*:[4] "[W]hile on the way to or from work the employee is subjected only to the same risks or hazards as those to which the general public is subjected. Thus, those risks are not causally related to the employment. [Citations omitted]" "'[T]he question of whether the 'going and coming' rule applies must be addressed on a case-by-case basis.' [Citation omitted.]"[5]

K.S.A. 2010 Supp. 44-508(f) is a codification of the "going and coming" rule developed by courts in construing workers compensation acts. This is a legislative declaration that there is no causal relationship between an accidental injury and a worker's employment while the worker is on the way to assume the worker's duties or after leaving those duties, which are not proximately caused by the employer's negligence.[6]

K.S.A. 2010 Supp. 44-508(f) contains exceptions to the "going and coming" rule. First, the "going and coming" rule does not apply if the worker is injured on the employer's premises.[7] Another exception is when the worker is injured while using the only route available to or from work involving a special risk or hazard and the route is not used by the public, except dealing with the employer.[8]

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[2] *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 278, 899 P.2d 1058 (1995).

[3] See *Chapman v. Beech Aircraft Corp.*, 20 Kan. App. 2d 962, 894 P.2d 901, *aff'd* 258 Kan. 653, 907 P.2d 828 (1995).

[4] *Thompson v. Law Offices of Alan Joseph*, 256 Kan. 36, 46, 883 P.2d 768 (1994).

[5] *Chapman v. Beech Aircraft Corp.,* 20 Kan. App. 2d at 964; see *Chapman v. Beech Aircraft Corp.*, 258 Kan. 653, Syl. ¶ 3.

[6] *Chapman v. Victory Sand & Stone Co.*, 197 Kan. 377, Syl. ¶ 1, 416 P.2d 754 (1966).

[7] *Thompson*, 256 Kan. 36, Syl. ¶ 1. The court held that the term "premises" is narrowly construed to be an area controlled by the employer.

[8] *Thompson*, 256 Kan. at 40.

The "premises" exception to this rule, which the ALJ found applied here, provides that if the employee is on the premises of the employer, the employee is not considered to be on his or her way to assume the duties of employment or to have left such duties. K.S.A. 44–508(f).[9]

In *Chapman v. Victory Sand & Stone Co.*, our Supreme Court defined "premises" as the "place where an employee may reasonably be during the time he is doing what a person so employed may reasonably do during or while the employment is in progress." In *Thompson*, "premises" was defined as "'not restricted to the permanent site of the statutory employer's business nor limited to property owned or leased by him but contemplates any place under the exclusive control of employer where his usual business is being carried on or conducted.'"[10]

In *Thompson*, the claimant was furnished with a parking space in a public garage across a public street from the office where she worked. Claimant went to the fourth floor of the public parking garage, used an enclosed overhead walkway across the public street to the employer's office, and took an elevator to the eighth floor. The elevator on the eighth floor exited into a hallway, which led to two offices, one of which was Thompson's employer's office. As the claimant exited the elevator, she slipped and fell. The claimant argued she was on her employer's premises the moment she parked her car and, therefore, she was on the premises of the employer when she fell. Alternatively, she argued the area in which she fell was on her employer's premises. However, neither the parking garage nor the building where the claimant worked was owned, controlled or maintained by her employer.

The ALJ in *Thompson* denied compensation because the claimant was en route to work when she was injured. The Director of Workers Compensation, the district court, and the Court of Appeals upheld the ALJ's ruling. The sole issue for the Kansas Supreme Court was whether the claimant's injury occurred on her employer's premises under K.S.A. 44–508(f). Significantly, the *Thompson* court initially noted that Kansas precedent required the employer to exercise control of an area in order for the area to be part of the employer's premises.

In affirming the denial of benefits, the court in *Thompson* relied upon several factors: (1) There was no evidence the employer controlled the parking garage other than paying the monthly parking fee; (2) there was no evidence the owner of the building where the employer rented space also owned the parking garage where the claimant parked her car; (3) there was no evidence that the employer directed the employees to park in a certain

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[9] *Rinke. 34 Kan.App.2d at 595.*

[10] *Thompson v. Law Offices of Alan Joseph,* 19 Kan .App. 2d 367, 372, 869 P.2d 761, *aff'd* 256 Kan. 36, 883 P.2d 768 (1994) (quoting Black's Law Dictionary 1181 [6th ed.1990]).

area in the lot; and (4) the claimant was not subjected to greater risk than the general public who used the parking garage. Therefore, the court found the claimant was not injured on the employer's premises.

In this case, respondent did not own or control the parking garage. The claimant could have chosen to park elsewhere. The space where claimant was injured did not subject her to any greater risk than the general public. In *Thompson*, the claimant had actually made it to the floor where her office was located. In this case, claimant was still on the main floor on her way to the elevators. Based upon the Supreme Court's holding in *Thompson*, the Board cannot find this claim compensable.

CONCLUSION

Based upon the foregoing, the Board finds that claimant did not suffer a compensable accidental injury arising out of or in the course of her employment pursuant to K.S.A. 2010 Supp. 44-508(f).

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Steven J. Howard dated February 6, 2013, is reversed.

IT IS SO ORDERED.

Dated this _____ day of May, 2013.

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BOARD MEMBER

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BOARD MEMBER

_____
BOARD MEMBER

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Steven J. Howard, Administrative Law Judge